

## REMARKS/ARGUMENTS

The rejections presented in the Office Action dated March 19, 2007 (hereinafter Office Action) have been considered. Claims 1, 3-6, 10-22 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 18 and 22 stand rejected 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicants respectfully traverse the rejections, and note that the Office Action provides no support for the contention that “computer-readable medium is not limited to tangible medium.” (Office Action, paragraph 2). Nonetheless, in order to facilitate prosecution of the application, Applicants have amended Claims 18 and 22 to read “computer-readable storage medium.” Withdrawal of the rejection is therefore respectfully solicited.

Claim 17 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicants traverse, but have amended Claim 17 to remove term “its” objected to in the Office Action. These amendments were not made for purposes of clarification, and the Applicants have not intended to narrow the scope of Claim 17, nor is the scope of Claim 17 narrowed by this amendment. Withdrawal of the rejection is therefore respectfully solicited.

Claims 1-4, 6-10 and 12 -22 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,654,790 to Ogle et al. (hereinafter “*Ogle*”). The Applicants respectfully submit that the claims as originally filed are not anticipated by *Ogle*. However, in order to facilitate prosecution of the application and in a bona fide attempt to advance the application to allowance, the Applicants present this response with amendment. For example, Claim 1 has been amended to incorporate the features of Claim 2, and Claim 2 has been canceled. Similar amendments have been made to independent Claims 6, 12, 18, 19, and 22. Applicants respectfully submit that *Ogle* fails to teach all of the limitations of Claims 1, 6, 12, 18, 19, and 22 as originally filed, and particularly as amended.

*Ogle* describes “enabling messaging systems to use alternative message delivery mechanisms.” (*Ogle*, Abstract). In *Ogle*’s embodiments, an IMS has a “registry (which may be, for example, a database or other storage facility) where the user’s information is stored” which allows “the IMS to extend its awareness of reachable users” using alternative message delivery mechanisms. (*Ogle*, col. 7, lines 35-46). “Constraints or preferences may optionally be added to a registered alternative, such as specifying a limitation on days of the week and/or hours of the day when a particular alternative may be used.” (*Ogle*, col. 7, lines 46-50). When an alternate message delivery mechanism is used, the sender may be notified by a return message (*Ogle*, col. 10, lines 3-8).

However, nowhere does *Ogle* describe the IMS registry being a profile server that governs access rights to the presence information of the reachable users. The Office Action relies on column 7, lines 35-56 of *Ogle* to show this feature, however, as outlined above, nothing in this portion of *Ogle* even suggests that the registry governs access rights to profile information. *Ogle* describes “constraints or preferences” that may be used to restrict sending messages using a particular alternative delivery mechanism, but these constraints are not used to restrict rights of the message sender to access the registry.

The portions of *Ogle* relied upon in the Office Action do not disclose a profile server that governs access rights to presence information, nor does any other part of *Ogle* describe any of rights, permissions, authorization, consent, etc., related to access of the registry data by a message sender. For example, *Ogle* describes “the extended IMS 403 [receiving] the message 402a, and [searching] for alternative mechanisms for delivering the message 402a to user 311” without performing any checks as to whether the sender of the message 402a has the right to access the “user’s 311 entries in the registry 300.” (*Ogle*, col. 9, lines 39-45). As such, *Ogle* at least fails to disclose accessing a profile server associated with a message recipient, wherein profile information accessed from the profile server governs a message sender’s access rights to presence information associated with the message recipient. For at least this reason, *Ogle* fails to anticipate independent Claims 1, 6, 12, 18, 19, and 22.

Dependent Claims 3 and 4 depend from independent Claim 1; dependent Claim 10 depends from independent Claim 6; dependent Claims 13-17 depend from independent Claim 12; and dependent Claims 20 and 21 depend from independent Claim 19. These dependent claims also stand rejected under 35 U.S.C. §102(e) as being anticipated by *Ogle*. While Applicants do not acquiesce with the particular rejections to these dependent claims, including any assertions concerning inherency or the taking of Official Notice, these rejections are now moot in view of the remarks made in connection with independent Claims 1, 6, 12, and 19. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from *Ogle*. Therefore, dependent Claims 3, 4, 10, 13-17, 20, and 21 are also in condition for allowance.

Claims 5 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Ogle* as applied above, and further in view of Official Notice. Applicants respectfully traverse the rejection. Applicants respectfully disagree with the assertion that “the concept and advantages of Session Initiation Protocol (SIP) is old and well known in the art,” particularly when Claims 5 and 11 are viewed as a whole. For example, Claim 5 sets forth that presence information associated with a second network entity is gathered by a messaging service and provided in a backward messaging using SIP to a first network entity in response to the first network entity sending a message to the second network entity. Applicants submit that, even if the contention that “the concept and advantages of Session Initiation Protocol (SIP) is old and well known in the art” was correct, this nonetheless fails to address the particular uses of SIP as set forth in these claims. In particular, Applicants submit that it is not old and well known in the art to use SIP signaling for backward messaging that provides, to a first network entity, presence information associated with a second network entity.

Applicants contend that reasonable doubt exists regarding the circumstances justifying the exercise of official notice, and request evidence that demonstrates the appropriateness of the officially noticed facts pursuant to MPEP § 2144.03. Applicants

reserve the opportunity to respond to the Examiner's comments concerning any such judicially noticed facts.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Taking official notice of the above-discussed use of SIP disregards the requirement of analyzing Applicants' claimed subject matter *as a whole*. Applicants respectfully reiterate the legal tenet that facts so noticed should not comprise the principle evidence upon which a rejection is based. MPEP § 2144.03. Therefore, allowance of Claims 5 and 11 is respectfully solicited.

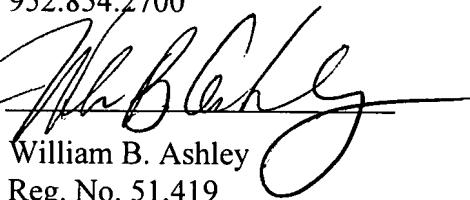
Authorization is given to charge Deposit Account No. 50-3581 (NSN.017.A1) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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